

**DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH**

Hedley Building 433 River Street Troy, NY 12180

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Executive Deputy Commissioner

August 18, 2009

Bent Philipson
Niskayuna Operating Company, LLC
20 Franklin Place
Woodmere, New York 11598

RE: 082134-E
Niskayuna Operating Company, LLC d/b/a Pathway
Rehabilitation and Special Care Center
(Schenectady County)
Niskayuna Operating Company, LLC requests
approval to become the new operator of
Northwoods Rehabilitation and Extended Care
Facility at Hilltop

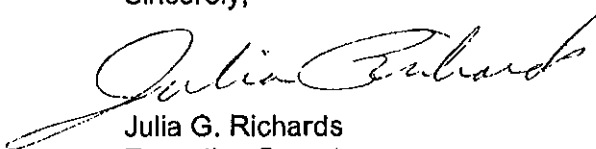
Dear Mr. Philipson:

The above referenced project is scheduled for review by the Establishment Committee of the Public Health Council on August 25, 2009. The meeting is open to the public and will be held at 10:00 a.m. at the Empire State Plaza, Concourse Level, Meeting Room 1, Albany, New York.

Subsequently, the recommendation of the Committee will be forwarded to the full Public Health Council for final decision. The Public Health Council will meet at 10:00 a.m. on September 11, 2009, at the Empire State Plaza, Concourse Level, Meeting Rooms 2 – 3, Albany, New York. It is anticipated that the project will be reviewed by the Public Health Council at that time. The Public Health Council meeting is also open to the public, but public comment and participation is not allowed.

Should you have any questions regarding this meeting, please feel free to contact me at (518) 402-0964.

Sincerely,



Julia G. Richards
Executive Secretary
State Hospital Review and Planning Council

Enclosure



Public Health Council

Project # 082134-E

Niskayuna Operating Co. LLC

d/b/a Pathway Rehabilitation and Special Care Center

County: Schenectady (Niskayuna)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: October 29, 2008

Executive Summary

Description

Niskayuna Operating Co., LLC d/b/a Pathway Rehabilitation and Special Care Center, is seeking approval to establish a new operator of Northwoods Rehabilitation and Extended Care Facility at Hilltop, an existing 112 bed residential health care facility (RHCF) located at 1805 Providence Avenue, Niskayuna.

The proposed change in ownership is part of a four facility acquisition involving Highgate LTC Management, LLC, the operator and Highgate Manor Group, LLC, the owner of the realty which filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code. The bankruptcy proceeding is ongoing. The RHCF is currently being operated by EF Consulting, (sole member Esther Farkovitz) approved as receiver by DOH on November 3, 2008.

On August 12, 2008 Oasis HC, LLC (sole member then Benjamin Landa) entered into a purchase agreement to acquire the rights, title and interest in the real estate, buildings and operations. The bankruptcy court approved the sale to Oasis HC on August 28, 2008.

Also, Oasis has designated Niskayuna Operating Co., LLC as the proposed operator of Northwoods Rehabilitation and Extended Care Facility at Hilltop, and will assign the real property interest to 1805 Providence Avenue, LLC.

There are no project costs associated with this proposal.

DOH Recommendation

Contingent approval

Need Summary

Occupancy at Northwoods Rehabilitation and Extended Care Facility at Hilltop for 2006 and 2007 was 76.6 percent and 81.4 percent respectively. Schenectady County's occupancy for the same period was 86.62 percent (2006) and 86.37 percent (2007).

RHCF Bed Need - Schenectady

2007 Projected Need	1,239
Current Beds	1,214
Beds under Construction	-210*
Total Resources	1,004
Unmet Need	235

*Effective 12/31/08 Glendale Home in Schenectady decertified 140 beds per Berger recommendations.

Program Summary

No changes in program or physical environment are being proposed in this application. Ownership of the operation, currently and after the requested change, is as follows:

Current	Proposed
Highgate LTC Management LLC	Niskayuna Operating Co., LLC d/b/a Pathway Rehabilitation and Special Care Center
Eugene Nachamkin (1%)	Bent Philipson (100%)
Dianna Koehler (49%)	
Howard Krant (25%)	
Scott Bialick (25%)	

Financial Summary

The facility is being sold in accordance with the bankruptcy proceedings.

Budget:	Revenues:	\$16,709,057
	Expenses:	16,054,794
	Gain/(Loss):	\$654,263

Subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA review of this application.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patients in the area awaiting placement, the facility's total Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a loan commitment for working capital acceptable to the Department of Health. [BFA]
3. Submission of an affidavit from each member in relation to the realty entities, acceptable to the Department of Health, which states that he or she is willing to contribute resources disproportionate to ownership percentages. [BFA]
4. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
5. Submission of a photocopy of the signed and dated Restated Articles of Organization of Niskayuna Operating Co., LLC, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the signed and dated Operating Agreement of Niskayuna Operating Co., LLC, which is acceptable to the Department. [CSL]
7. Submission of evidence of the transfer of the business and operations of the facility to the applicant, which is acceptable to the Department. [CSL]
8. Submission of evidence of site control, which is acceptable to the Department. [CSL]

State Council Recommendation

June 4, 2009 – The Office of Health Systems Management recommendation was adopted.

Need Analysis

Background

Occupancy at Northwoods Rehabilitation and Extended Care Facility at Hilltop for 2006 and 2007 was 76.6 percent and 81.4 percent respectively. Schenectady County's occupancy for the same period was 86.62 percent (2006) and 86.37 percent (2007).

RHCF Bed Need – Schenectady

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Total Resources	1,004
Unmet Need	235

*Effective 12/31/08 Glendale Home in Schenectady decertified 140 beds per Berger recommendations.

There will be no change in beds or services when this transfer of ownership is approved.

Contingent approval is recommended.

BACKGROUND

Between 2006 and 2007, utilization at Northwoods Rehabilitation and Extended Care Facility at Hilltop increased by 4.8 percent, while utilization in Schenectady County remained almost constant, as shown below:

RHCF Utilization

Facility/County	% Occupancy 2006	%Occupancy 2007
Northwoods Rehabilitation at Hilltop	76.6%	81.4%
Schenectady County	86.62%	86.37%

At the end of 2006, the case mix index for 85 patients was 1.25 for RHCF residents and 2.74 for TBI residents. Relative to the RHCF residents, there were 8 Physical A's and 1 Physical B; for TBI residents, there were 6 Physical A's and 3 Physical B's.

ACCESS

Regulations indicate that the Medicaid patient admissions standard shall be 75 percent of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75 percent of the planning area percentage of Medicaid admissions or 75 percent of the Health Systems Agency area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

Northwoods Rehabilitation and Extended Care Facility at Hilltop achieved and surpassed the 75 percent planning average for 2006 and 2007. The facility reported Medicaid admissions of 27.86 percent and 20.74 percent in 2006 and 2007 respectively.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description

	EXISTING	PROPOSED
FACILITY NAME	Northwoods Rehabilitation and Extended Care Facility at Hilltop	Pathway Rehabilitation and Special Care Center
ADDRESS	1805 Providence Avenue Niskayuna, NY 12309 (Schenectady County)	Same
RHCF CAPACITY	110 70 TBI beds 40 traditional RHCF beds 2 SSTC beds	Same
ADHC PROGRAM CAPACITY	NA	Same
TYPE OF OPERATOR	Limited Liability Company	Same
CLASS OF OPERATOR	Proprietary	Same
OPERATOR	Highgate LTC Management, LLC Dianna Koehler-Nachamkin – 49% Howard Krant – 25% Scott Bialick – 25% Eugene Nachamkin – 1% Long Hill Alliance Group – court appointed receiver effective 11/29/06 EF Consulting, LLC (Esther Farkovitz sole member) – DOH approved receiver replacing Long Hill Alliance Group effective 11/3/08	Oasis HC, LLC has designated Niskayuna Operating Co., LLC as the proposed operator of NECF at Hilltop Bent Philipson-100%

ESTABLISHMENT/CONSTRUCTION INFORMATION

A. ESTABLISHMENT APPLICATION REVIEW

1. CHARACTER AND COMPETENCE:

• FACILITIES REVIEWED:

Nassau Extended Care Facility	RHCF	2004 to Present
Park Avenue Extended Care Facility	RHCF	2004 to Present
Throgs Neck Extended Care Facility	RHCF	2004 to Present
Townhouse Extended Care Center	RHCF	2004 to Present
Avalon Garden Rehabilitation and Health Care Center	RHCF	2003 to Present
Bayview Nursing and Rehabilitation Center	RHCF	2003 to Present
The Hamptons Center for Rehabilitation & Nursing	RHCF	7/10/08 to Present

• INDIVIDUAL BACKGROUND REVIEW:

Bent Philipson discloses employment at Woodmere Rehab and Health Care Center from 1996 to present as manager. Mr. Philipson discloses he is a member of SentosaCare, LLC, which provides a variety of support services to facilities that have common ownership interest. Mr. Philipson discloses ownership interest in:

Avalon Garden Rehabilitation and Health Care Center	2003 to Present
Bayview Nursing and Rehabilitation Center	2003 to Present
Nassau Extended Care Facility	2004 to Present
Park Avenue Extended Care Facility	2004 to Present
The Hamptons Center for Rehabilitation and Nursing	7/10/08 to Present
Throgs Neck Extended Care Facility	2004 to Present
Townhouse Extended Care Center	2004 to Present

- **CONCLUSION**

No adverse information has been received concerning the character and competency of the applicants.

The review of the operations of Bayview Nursing & Rehabilitation Center from 2003 to present reveals that:

- The facility has been assessed a fine in the amount of \$7000.00 pursuant to a Stipulation and Order NH-05-050 issued September 29, 2005 for surveillance findings of November 16, 2004. Deficiencies were found under 10 NYCRR Part 415.5(h)(2) Quality of Life: Environment; 415.12 Quality of Care; 415.12(c)(1) Quality of Care Pressure Sores; 415.12(h)(2) Quality of Care: Accidents.
- The facility has been assessed a fine in the amount of \$2,000.00 pursuant to a Stipulation and Order NH-07-046 issued June 13, 2007 for surveillance findings of December 2, 2005. Deficiencies were found under 10 NYCRR Part 415.11(c)(3) Comprehensive Care Plans.

The review of the operations of Bayview Nursing & Rehabilitation Center for the time period given reveals that a substantially consistent high level of care has been provided since there were no repeat enforcements.

The review of the operations of Avalon Gardens Rehabilitation & Health Care Center, LLC from 2003 to present reveals that:

- The facility has been assessed a fine in the amount of \$2000.00 pursuant to a Stipulation and Order NH-09-014 issued April 21, 2009 for surveillance findings of May 23, 2008. Deficiencies were found under 10 NYCRR Part 415.12(h)(1) & (2) Quality of Care: Accidents.

The review of the operations of Avalon Gardens Rehabilitation & Health Care Center, LLC for the time period given reveals that a substantially consistent high level of care has been provided since there were no repeat enforcements.

The review of operations of the remaining facilities for the time periods indicated revealed that a substantially consistent high level of care has been provided.

2. PROJECT REVIEW

- **PROGRAM REVIEW:**

No changes in program are being proposed in the application. The purpose of the application is to establish Niskayuna Operating Co., LLC as the new operator of Northwoods Rehabilitation and Extended Care Center at Hilltop. The proposed change in ownership is part of a four facility acquisition involving Highgate LTC Management, LLC the operator of the four facilities, and Highgate Manor Group, LLC, the owner of the realty. The court appointed trustee of Highgate Manor Group, LLC is Mark I. Fishman, Esq., who has been charged with the authority and function to sell the facilities. Highgate LTC Management and Highgate Manor Group, LLC filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code. The courts appointed Long Hill Alliance Group as receiver of the facilities until a purchaser could be identified for the operations and realty interests. On August 12, 2008 Oasis HC, LLC (sole member Benjamin Landa) entered into a Purchase Agreement to acquire the rights, title and interest in the real estate, business and operations. Ms. Esther Farkovitz, as sole member of EF Consulting, LLC, was approved by the Department to replace Long Hill Alliance Group as the receiver until a Certificate of Need Application is approved establishing a new operator for the facilities. Oasis HC, LLC has designated Niskayuna Operating Co., LLC as the proposed operator of Northwoods Rehabilitation and Extended Care Facility at Hilltop, and has assigned the real property interest to 1805 providence Avenue, LLC. Under the terms of the Purchase Agreement, the Purchaser will designate an Operating Designee to take over the operations of the Facilities at the Closing. Upon the Closing of the

purchase, Oasis HC, LLC will assign the operating and real property interests of the four facilities to the following entities:

FACILITY	OPERATOR	REALTY ENTITY
Rosewood Gardens	Rensselaer Operating Co., LLC d/b/a Rosewood Rehabilitation and Nursing Center	284 Troy Road, LLC
Troy	Troy Operating Co., LLC d/b/a Woodlands Rehabilitation and Nursing Center	100 New Turnpike Road, LLC
Hilltop	Niskayuna Operating Co., LLC d/b/a Pathway Rehabilitation and Special Care Center	1805 Providence Avenue, LLC
Cortland	Cortland Operating Co., LLC d/b/a Crown Center for Rehabilitation and Nursing	28 Kellogg Road, LLC

The members of the four proposed realty entities are:

Benjamin Landa – 17.5%

Philipson Family Limited Partnership – 17.5%

Dovid Rubinstein – 40%

Rochel David – 10%

Leah Friedman – 10%

Goldie Platschek – 5%

No consulting or administrative agreement proposed in the application.

- **PHYSICAL ENVIRONMENT:**

No changes in physical environment are being proposed in this application. Hilltop and Cortland facilities will be submitting additional applications to convert existing residential health care facility beds to ventilator-dependent beds. Hilltop plans to convert its 36 pediatric beds, which include two scheduled short term care beds, to 20 ventilator-dependent beds for adults, with the remaining beds utilized as traditional residential health care facility beds. Cortland plans to convert 15 residential health care facility beds to 15 ventilator-dependent beds and utilize the remaining unit as a respiratory step-down unit.

- **CONCLUSION:**

No changes in program or physical environment are being proposed in this application. No administrative services agreement is contemplated with SentosaCare or any other entity.

RECOMMENDATION:

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

Niskayuna Operating Co., LLC d/b/a Pathway Rehabilitation and Special Care Center, is seeking approval to establish a new operator of Northwoods Rehabilitation and Extended Care Facility at Hilltop, an existing 112 bed residential health care facility (RHCF) located at 1805 Providence Avenue, Niskayuna (Schenectady County). The 112 beds are broken down into 4 separate categories; there are 40 RHCF specific beds, 36 Specialty Pediatric beds, 28 Head Injury beds and 8 Long Term Vent Beds. Due to this there are specific Medicaid, Medicare and Private pay rates for all of the categories. The proposed change in ownership is part of a four facility acquisition involving Highgate LTC Management, LLC, the operator and Highgate Manor Group, LLC, the owner of the realty which filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code. The court appointed trustee of Highgate Manor Group, LLC is Mark I. Fishman, ESQ, who has been charged with the authority and functions of a Chapter 11 Trustee to sell the facilities. Long Hill Alliance Company was appointed Receiver by the Supreme Court of the State of New York on November 29, 2006. The RHCF is currently being operated by EF Consulting, LLC as receiver under the Section 2810 of the Public Health Law. DOH approved the appointment of EF Consulting, LLC, whose sole member is Esther Farkovitz as the new receiver on November 3, 2008. The bankruptcy court approved the sale to Oasis HC, LLC on August 28, 2008. The sale is contingent upon CON approval and the closing is to take place 30 days after issuance of non-contingent CON approval.

Ownership of the operation, currently and after the requested change, is as follows:

<u>Current</u>		<u>Proposed</u>	
Highgate LTC Management, LLC		Niskayuna Operating Co., LLC d/b/a Pathway Rehabilitation and Special Care Center	
Eugene Nachamkin	1% Membership	Bent Philipson	100% Membership
Dianna Koehler	49% Membership		
Howard Krant	25% Membership		
Scott Bialick	25% Membership		

The realty is currently owned by Highgate Manor, LLC, ownership of the realty, currently and after the requested change, is as follows:

<u>Current</u>		<u>Proposed</u>	
Highgate Manor Group, LLC		1805 Providence Avenue, LLC	
Eugene Nachamkin	1.0% Membership	Benjamin Landa	17.5% Membership
Dianna Koehler-Nachamkin	34.0% Membership	Philipson Family Limited Partnership	17.5% Membership
Howard Krant	17.5% Membership	David Rubinstein	40.0% Membership
Patricia Bruder	10.0% Membership	Rochel David	10.0% Membership
Longview Horizon, LLC	20.0% Membership	Leah Freidman	10.0% Membership
Scott Bialick	17.5% Membership	Goldie Platschek	5.0% Membership

The proposed members also are seeking establishment approval to acquire ownership of the following residential health care facilities, also part of the facilities acquisition:

<u>CON</u>	<u>Applicant</u>	<u>Facility</u>	<u>Number of Beds</u>
082135	Troy Operating Co., LLC d/b/a Woodlands Rehabilitation and Nursing Center	Northwoods Rehabilitation and Extended Care Center at Troy, Rensselaer County	120
082136	Rensselaer Operating Co., LLC d/b/a Rosewood Rehabilitation and Nursing	Northwoods Rehabilitation and Extended Care Center at Rosewood Gardens, Rensselaer	80

082137	Center Cortland Operating Co., LLC d/b/a Crown Center for Rehabilitation and Nursing	County Northwoods Rehabilitation and Extended Care Center at Cortland, Cortland County	200
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All four applications will be processed concurrently. Bent Philipson presently has ownership interests in the following Nursing Homes: Avalon Gardens Rehabilitation and Health Care Center, a 353 bed RHCF, located in Smithtown, New York; Bayview Nursing and Rehabilitation Center, a 185 bed RHCF, located in Island Park, New York; Nassau Extended Care Facility, a 280 bed RHCF, located in Hempstead, New York; Park Avenue Extended Care Facility, a 240 bed RHCF, located in Long Beach, New York; Throgs Neck Extended Care Facility, a 205 bed RHCF, located in Bronx, New York and Townhouse Extended Care Center, a 280 bed RHCF, located in Uniondale, New York.

FINANCIAL SUMMARY

The facility is being sold in accordance with the bankruptcy proceedings. The current operator is Esther Farkovitz as the receiver. There are no project costs associated with this proposal.

Budget:	Revenues:	\$16,709,057
	Expenses:	<u>16,054,794</u>
	Gain/(Loss):	\$654,263

Subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

FINANCIAL ANALYSIS

ASSET PURCHASE AGREEMENT

The Change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreements, summarized below:

Date:	August 12, 2008
Seller:	Mark Fishman, Chapter 11 Trustee, for Highgate Manor Group, LLC and Highgate LTC Management, LLC
Purchaser:	Oasis HC, LLC
Purchased Assets:	The real estate and all assets used in operation of the facility, including: the trade names of all four Northwoods Rehabilitation and Extended Care Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing; tanks owned by Northeast Gas Technologies and personal property of residents.
Liabilities Assumed:	No liabilities will be assumed since all liabilities will be satisfied through the bankruptcy court settlement.
Liabilities Assumed During Temporary Receivership:	Purchaser or "operating designee" shall use accounts receivables, without credit to the purchase price, towards any liabilities arising from the operation of the facilities in accordance with the orders entered by the Bankruptcy Court.
Purchase Price:	\$23,300,000 summarized as follows; \$2,129,620 for Northwoods Rehabilitation and Extended Care facility at Rosewood Gardens, \$6,514,680 at Cortland, \$10,934,690 at Hilltop and \$3,721,010 at Troy.

Payment Of Purchase Price A deposit of \$2,275,000 paid to the trustee to be held in escrow with the remaining \$21,025,000 to be paid held by trustee prior to closing.

Oasis HC, LLC is financing all four realty and operational entities through a pro-rated share of the purchase price with totals \$18,300,000, resulting in an equity requirement of \$5,000,000. \$2,275,000 is being held in deposit and the remaining \$2,725,000 will be taken from the proposed realty entities. Presented as BFA Attachment C is the net worth of the proposed members of the realty entities.

ASSIGNMENT AGREEMENT

The change in operational and realty ownership will be effectuated in accordance with an executed assignment agreement, the terms of which are summarized below:

Date: October 6, 2008
Assignor: Oasis HC, LLC
Assignee: 1805 Providence Avenue, LLC
Operating Designee: Niskayuna Operating Co., LLC
Assets Assigned: Assignor's right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned: Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

LEASE AGREEMENT AND MEDICAID CAPITAL REIMBURSEMENT

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date: October 15, 2008
Premises: A 112 bed RHCF located at 1805 Providence Avenue, Niskayuna, NY
Lessor: 1805 Providence Avenue, LLC
Lessee: Niskayuna Operating Co., LLC
Terms: 30 years commencing on the execution of the lease
Rental: \$1,109,376 per year (\$92,448 per month)
Provisions: Lessee is responsible for taxes, insurance, utilities and maintenance.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity. The proposed operator is only paying the lease payments for the operations of these four facilities. There is no other consideration paid by the applicant for these transactions.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements, with a remaining useful life of 21 years. This methodology will not be altered upon change in ownership. The facility will experience average annual Medicaid reimbursement shortfalls of approximately \$542,907 over the remaining lease term.

There are no Medicaid liabilities to be assumed since this will be resolved through bankruptcy.

OPERATING BUDGET

Following is a summary of the submitted operating budget for the RHCF, presented in 2009 dollars, for the first year subsequent to change in ownership:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid RHCF	\$214.64	\$783,445
Medicare RHCF	403.47	2,593,522
Private Pay RHCF	519.54	1,590,846
Medicaid TBI	416.91	2,091,217
Medicare TBI	413.70	723,567
Private Pay TBI	466.48	783,694
Medicaid Vent	552.72	593,626
Medicare Vent	380.81	216,681
Private Pay Vent	689.71	657,983
Medicaid Pediatric	682.25	6,211,883
Private Pay Pediatric	686.34	<u>462,593</u>
Total Revenue		16,709,057
Expenses:		
Direct	\$267.09	\$9,070,512
Indirect	100.71	3,420,152
Noncomparable	54.67	1,856,480
Capital	50.28	<u>1,707,650</u>
Total Expense		\$16,054,794
Net Income		<u>\$654,263</u>
Utilization (Patient days)		33,961
Occupancy		83.08%

The following is noted with respect to the submitted operating budget:

- Direct and Indirect costs pierce the respective ceiling
- The capital component of the Medicaid rate is based on historical cost
- Expenses include lease rental
- Medicaid revenues assume no rebasing, which is accurate, and include assessment revenues.
- Budgeted case mix of 1.25 was utilized by the applicant at the time of CON filing for change in ownership which is comparable to the current case. The applicant has adjusted cost for pharmacy and bankruptcy fees
- Overall utilization is projected at 83.08%, while utilization by payor source is expected as follows:

Medicaid	55.49%
Medicare	25.75%
Private Pay	18.76%

- Breakeven occupancy is projected at 79.01%

The reason the Medicare vent rate is lower than the Medicare RHCF rate is due to collections on a Medicare vent account. All of the rates are net rates, not charges, so the net rates can be influenced by such recoveries by Medicare. Since the Medicare vent days are so few at the facility, it only takes one patient account to cause a collection problem which in turn would cause the net rate to be lower.

The reason the budgeted private pay TBI rate is lower than the budgeted private pay RHCF rate is because the Medicare coinsurance payments are being posted as private pay monies rather than Medicare monies.

CAPABILITY AND FEASIBILITY

The purchase price will be satisfied by the landlord by a loan of \$8,588,190 at an interest rate of 8% for 10 years, with a 20 year amortization with the remaining \$2,346,500 from 1805 Providence Avenue, LLC equity. A letter of interest has been submitted by the applicant from Greystone.

Working capital requirements are estimated at \$2,675,800, based on two months of first year expenses, which \$1,337,883 will be satisfied from the proposed member's equity and the remaining \$1,337,917 will be satisfied through a loan from Greystone at 8% over 5 years. A letter of interest has been supplied by the bank. Presented as BFA Attachment A, is the Net Worth of proposed members.

The submitted budget indicates that a net income of \$654,263 would be maintained during the first year following change in ownership. Presented as BFA Attachment B is the pro forma balance sheet of Niskayuna Operating Co., LLC d/b/a Pathway Rehabilitation and Special Care Center, which indicates positive members' equity of \$1,337,883 as of the first day of operations. The following is noted with respect to the projected first year budget in comparison to the 2007 cost report filed with the Department and the 2009-2010 budget:

- Overall utilization by payor and patient day has increased since 2007 due to the downsizing of 3 homes in Schenectady County per the Berger mandate.
- Average patient revenue for Medicare and Private Pay is within the per diem rate corridors reported on the 2007 cost report.
- Budgeted 2009 Medicaid rate is lower than the projected 2009 Medicaid rate based on the 2009-2010 budget changes and, therefore, financial projections will not be adversely affected.

The facility experienced positive working capital, equity and a net operating loss in 2007 and is in receivership under Chapter 11 of the Bankruptcy Code. The 2007 and 2006 audited financial statements are not available.

As shown on BFA Attachment E, Avalon Gardens Rehabilitation Center had an average negative working capital position and a positive net asset position, and generated an average net loss of \$379,217 during the period 2005 through 2007. The average net loss is due to a change of operators which occurred in 2003. The base year cost report was not filed until 2005 when the 90% threshold was achieved in order for the facility to receive the pending Medicaid adjustment for rebasing.

As shown on BFA Attachment F, Bayview Nursing and Rehabilitation Center had average positive working capital and net asset positions, and generated an average net income of \$391,251 during the period 2005 through 2007.

As shown on BFA Attachment G, Nassau Extended Care Facility had average positive working capital and net asset positions, and generated an average net income of \$1,077,658 during the period 2005 through 2007.

As shown on BFA Attachment H, Park Avenue Extended Care Facility had average positive working capital and net asset positions, and generated an average net income of \$555,026 during the period 2005 through 2007. The 2005 net loss was due to a change in ownership and operations have since been improved.

As shown on BFA Attachment I, Throgs Neck Extended Care Facility had an average negative working capital position and average positive net asset position, and generated an average net income of \$175,312 during the period 2005 through 2007. The 2005 net loss was due to a change in ownership. The 2005 net loss was due to a change in ownership and operations have since been improved.

As shown on BFA Attachment J, Townhouse Extended Care Facility had an average negative working capital and an average positive net asset position, and generated an average net loss of \$822,257 during the period 2005 through 2007. The negative working capital was caused due to a change in ownership of the facility back in November 2003. This negative working capital is due to the facility incurring increased operating costs at the start of operations and only receiving a median rate to cover their costs at inception. The facility intends to rectify the situation by requesting a rebased rate in order to more accurately cover their costs.

Based on the preceding, and subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and contingent approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments	
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BFA Attachment A	Net Worth of proposed member
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Net Worth of proposed members of the realty entities
BFA Attachment D	Financial Summary- Northwoods Extended Care Facility at Hilltop
BFA Attachment E	Financial Summary- Avalon Gardens Rehabilitation Center
BFA Attachment F	Financial Summary- Bayview Nursing and Rehabilitation Center
BFA Attachment G	Financial Summary- Nassau Extended Care Facility
BFA Attachment H	Financial Summary- Park Avenue Extended Care Facility
BFA Attachment I	Financial Summary- Throgs Neck Extended Care Facility
BFA Attachment J	Financial Summary- Townhouse Extended Care Facility
BFA Attachment K	Establishment Checklist
BHFP	Map

Niskayuna Operating Co., LLC d/b/a Pathway Rehabilitation and Special Care Center

Net Worth

Bent Philipson
As of 4/24/09

ASSETS

Cash	\$1,431,000
Notes Receivable	1,535,000
Real Estate	6,005,000
Cash Value of Life Insurance	65,000
Health Facility Interests	24,054,050
TOTAL ASSETS	\$33,090,050

LIABILITIES

Mortgages Payable	20,824,000
TOTAL LIABILITIES	\$20,824,000

<u>NET WORTH</u>	<u>\$12,266,050</u>
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**Niskayuna Operating Co., LLC
Doing Business As
Pathway Rehabilitation and Special Care Center**

Pro Forma Balance Sheet

Assets

Working Capital	\$2,675,800
Total Assets	\$2,675,800

Liabilities and Equity

Liabilities

Mortgage	\$0
Working Capital Loan	\$1,337,917
Total Liabilities	\$1,337,917

Members' Equity	\$1,337,883
Total Liabilities and Members' Equity	\$2,675,800

1805 PROVIDENCE AVENUE, LLCPRO FORMA BALANCE SHEETASSETS

Nursing Home - Real Property	\$10,934,690
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TOTAL ASSETS	\$10,934,690
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LIABILITIES AND EQUITYLIABILITIES

Mortgage	\$8,588,190
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TOTAL LIABILITIES	\$8,588,190
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MEMBER'S EQUITY	\$2,346,500
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TOTAL LIABILITIES AND MEMBER'S EQUITY	\$10,934,690
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Proposed Members of the Realty Entities- 284 Troy Rd., LLC 1805 Providence Avenue, LLC,
100 New Turnpike Road, LLC and 28 Kellogg Road, LLC

Net Worth

	<u>Benjamin Landa</u> <u>as of 12/31/2008</u>	<u>Bent Philipson</u> <u>as of 4/24/2009</u>	<u>David Rubinstein</u> <u>as of 12/31/2008</u>	<u>Leah Fridman</u> <u>as of 4/24/2009</u>	<u>Rochel David</u> <u>as of 4/24/2009</u>	<u>Total</u> <u>Networth</u>
<u>ASSETS</u>						
Cash	\$9,775,000	\$1,431,000	\$200,000	\$295,000	\$100,000	\$11,801,000
Stocks	\$3,187,000	\$0	\$650,000	\$0	\$0	\$3,837,000
Notes Receivable	\$0	\$1,535,000	\$0	\$0	\$0	\$1,535,000
Real Estate	\$11,300,000	\$6,005,000	\$0	\$1,500,000	\$2,750,000	\$21,555,000
Cash Value of Life Insurance	\$0	\$65,000	\$18,000	\$0	\$0	\$83,000
Health Facility Interests-Realty	\$2,400,000	\$0	\$0	\$0	\$0	\$2,400,000
Health Facility Interests-Operating	\$11,900,000	\$24,054,050	\$0	\$0	\$0	\$35,954,050
Other	950,000	\$0	\$75,000	\$80,000	\$85,000	\$1,190,000
TOTAL ASSETS	\$39,512,000	\$33,090,050	\$943,000	\$1,875,000	\$2,935,000	\$78,355,050
<u>LIABILITIES</u>						
Mortgages Payable	\$13,000,000	\$20,824,000	\$0	\$0	\$0	\$33,824,000
Other	\$0	\$0	\$0	\$3,000	\$48,000	\$51,000
TOTAL LIABILITIES	\$13,000,000	\$20,824,000	\$0	\$3,000	\$48,000	\$33,875,000
<u>NET WORTH</u>	\$26,512,000	\$12,266,050	\$943,000	\$1,872,000	\$2,887,000	\$44,480,050

Goldie Platschek is contributing 5% equity and there are no current financials on this member.

Financial Summary
Northwoods Rehabilitation and Extended Care Facility at Hilltop

FISCAL PERIOD ENDED

* Note: 2006 Financial Data was unavailable as the facility has not provided either certified financials or a full cost report in that year.

	<u>12/31/07</u>	<u>12/31/05</u>
ASSETS - CURRENT	\$12,668,051	\$8,925,526
ASSETS - FIXED AND OTHER	713,954	919,891
LIABILITIES - CURRENT	10,529,096	3,889,874
LIABILITIES - LONG-TERM	1,854,407	938,965
EQUITY	1,198,502	5,016,578
INCOME	\$15,720,195	\$13,847,245
EXPENSE	17,402,543	14,908,771
NET INCOME	(1,682,348)	(1,061,526)

OPERATOR/RELATIVE SALARIES

NUMBER OF BEDS	112	112
NUMBER OF DAYS IN YR	365	365
MAX PATIENT BED DAYS	40,880	40,880
MEDICAID PATIENT DAYS REPORTED	17,552	17,621
MEDICARE PATIENT DAYS REPORTED	8,746	9,760
PRIVATE/OTHER PATIENT DAYS REPORTED	6,370	4,014
TOTAL PATIENT DAYS REPORTED	32,668	31,395
PERCENT OF OCCUPANCY (DAYS)	79.91%	76.80%

PERCENT OCCUPANCY (DAYS):

MEDICAID	53.73%	56.13%
MEDICARE	26.77%	31.09%
PRIVATE/OTHER	19.50%	12.79%

<u>FOR 2007</u>	<u>MEDICAID</u>	<u>MEDICARE</u>	<u>PRIVATE</u>
INCOME PER PATIENT DAY	\$520.23	\$377.96	\$508.01
EXPENSE PER PATIENT DAY	<u>532.71</u>	<u>532.71</u>	<u>532.71</u>
NET INCOME PER PATIENT DAY	(12.48)	(154.75)	(24.70)

FOR 2005

INCOME PER PATIENT DAY	\$505.83	\$305.13	\$474.72
EXPENSE PER PATIENT DAY	<u>474.88</u>	<u>474.88</u>	<u>474.88</u>
NET INCOME PER PATIENT DAY	30.95	(169.75)	(0.16)

<u>MEDICAID RATE BREAKDOWN:</u>	<u>2007</u>	<u>2006</u>
OPERATING	\$160.94	\$157.80
CAPITAL	<u>77.52</u>	<u>62.97</u>
TOTAL	\$238.46	\$220.77

Financial Summary

BFA-Attachment E

Avalon GardensFISCAL PERIOD ENDED

	<u>12/31/07</u>	<u>12/31/06</u>	<u>12/31/05</u>
ASSETS - CURRENT	\$15,199,203	\$10,422,843	\$8,677,400
ASSETS - FIXED AND OTHER	10,996,172	11,267,206	10,909,751
LIABILITIES - CURRENT	23,271,860	18,890,675	15,378,347
LIABILITIES - LONG-TERM	<u>1,218,237</u>	<u>1,540,395</u>	<u>1,469,453</u>
EQUITY	\$1,705,278	\$1,258,979	\$2,739,351
INCOME	\$36,807,742	\$35,415,854	\$32,859,056
EXPENSE	<u>\$36,361,443</u>	<u>\$36,709,743</u>	<u>33,149,116</u>
NET INCOME	446,299	(1,293,889)	(290,060)
OPERATOR/RELATIVE SALARIES	\$0	\$0	\$0
NUMBER OF BEDS	353	353	353
PERCENT OF OCCUPANCY (DAYS)	91.1%	90.9%	92.4%
PERCENT OCCUPANCY (DAYS):			
MEDICAID	86.8%	87.8%	84.4%
MEDICARE	7.2%	7.9%	9.8%
PRIVATE/OTHER	6.0%	4.3%	5.8%
MEDICAID RATE BREAKDOWN:	<u>2008</u>	<u>2007</u>	<u>2006</u>
OPERATING	\$235.16	\$231.57	\$223.61
CAPITAL	<u>8.02</u>	<u>6.21</u>	<u>4.77</u>
TOTAL	\$243.18	\$237.78	\$228.38

Proposed Members with Ownership Interest
Bent Phillipson

% Ownership
29.5%

Financial Summary

Bayview Nursing and Rehabilitation Center, LLC

FISCAL PERIOD ENDED

	<u>12/31/07</u>	<u>12/31/06</u>	<u>12/31/05</u>
ASSETS - CURRENT	\$4,271,325	\$3,582,473	\$3,267,551
ASSETS - FIXED AND OTHER	6,733,653	6,951,801	7,187,862
LIABILITIES - CURRENT	4,545,704	3,543,473	3,128,572
LIABILITIES - LONG-TERM	<u>4,379,519</u>	<u>4,690,346</u>	<u>5,044,132</u>
EQUITY	\$2,079,755	\$2,300,455	\$2,282,709
INCOME	\$16,811,897	\$16,615,103	\$15,728,482
EXPENSE	<u>16,638,107</u>	<u>16,222,246</u>	<u>15,340,444</u>
NET INCOME	\$173,790	\$392,857	\$388,038
OPERATOR/RELATIVE SALARIES	\$0	\$0	\$0
NUMBER OF BEDS	185	185	185
PERCENT OF OCCUPANCY (DAYS)	91.4%	95.1%	96.2%
PERCENT OCCUPANCY (DAYS):			
MEDICAID	86.4%	90.1%	94.4%
MEDICARE	11.6%	8.5%	5.4%
PRIVATE/OTHER	2.0%	1.4%	0.3%
MEDICAID RATE BREAKDOWN	<u>2008</u>	<u>2007</u>	<u>2006</u>
OPERATING	\$231.46	\$227.70	\$222.67
CAPITAL	<u>18.97</u>	<u>16.73</u>	<u>13.73</u>
TOTAL	\$250.43	\$244.43	\$236.40
Proposed Members with ownership Interest	<u>% Ownership</u>		
Bent Phillipson	17.0%		

Financial Summary
Nassau Extended Care Facility

	<u>FISCAL PERIOD ENDED</u>		
	<u>12/31/07</u>	<u>12/31/06</u>	<u>12/31/05</u>
ASSETS - CURRENT	\$9,858,515	\$7,945,673	\$4,774,088
ASSETS - FIXED AND OTHER	12,484,820	12,370,406	12,259,136
LIABILITIES - CURRENT	5,079,401	4,286,499	5,076,692
LIABILITIES - LONG-TERM	<u>8,162,120</u>	<u>8,496,099</u>	<u>5,774,462</u>
EQUITY	9,101,814	7,533,481	6,182,070
<hr/>			
INCOME	\$29,362,607	\$28,610,268	\$27,378,087
EXPENSE	<u>27,881,774</u>	<u>27,258,857</u>	<u>26,977,357</u>
NET INCOME	\$1,480,833	\$1,351,411	\$400,730
<hr/>			
NUMBER OF BEDS	280	280	280
PERCENT OF OCCUPANCY (DAYS)	94.38%	94.95%	97.16%
<hr/>			
PERCENT OCCUPANCY (DAYS):			
MEDICAID	72.69%	75.25%	79.52%
MEDICARE	18.73%	13.90%	16.47%
PRIVATE/OTHER	8.58%	10.85%	4.01%
<hr/>			
MEDICAID RATE BREAKDOWN:	<u>2008</u>	<u>2007</u>	<u>2006</u>
OPERATING	\$216.55	\$213.77	\$208.49
CAPITAL	<u>39.75</u>	<u>41.20</u>	<u>30.46</u>
TOTAL	\$256.30	\$254.97	\$238.95
<hr/>			
<u>Proposed Members with ownership interest</u>	<u>Ownership Interest</u>		
Esther Farkovitz	7.0%		
Bent Phillipson	22.50%		

Financial Summary

Park Avenue Extended Care Facility

	<u>FISCAL PERIOD ENDED</u>		
	<u>12/31/07</u>	<u>12/31/06</u>	<u>12/31/05</u>
ASSETS - CURRENT	\$9,169,593	\$7,354,291	\$5,238,342
ASSETS - FIXED AND OTHER	\$10,692,680	\$10,528,183	10,453,331
LIABILITIES - CURRENT	\$4,416,698	\$5,637,753	6,255,210
LIABILITIES - LONG-TERM	<u>\$8,716,500</u>	<u>\$7,669,256</u>	<u>4,978,731</u>
EQUITY	6,729,075	4,575,465	4,457,732
<hr/>			
INCOME	\$26,122,503	\$23,042,912	\$22,010,371
EXPENSE	<u>\$24,306,393</u>	<u>\$22,925,179</u>	<u>22,279,136</u>
NET INCOME	1,816,110	117,733	(268,765)
<hr/>			
OPERATOR/RELATIVE SALARIES	\$0	\$0	\$0
<hr/>			
NUMBER OF BEDS	240	240	240
PERCENT OF OCCUPANCY (DAYS)	97.92%	95.26%	92.24%
<hr/>			
PERCENT OCCUPANCY	77.25%	77.30%	78.32%
MEDICAID	12.43%	16.03%	14.45%
MEDICARE	10.32%	6.68%	7.24%
PRIVATE/OTHER			
<hr/>			
MEDICAID RATE BREAKDOWN:	<u>2008</u>	<u>2007</u>	<u>2006</u>
OPERATING	\$223.24	\$218.73	\$208.73
CAPITAL	<u>37.45</u>	<u>41.44</u>	<u>33.77</u>
TOTAL	\$260.69	\$260.17	\$242.50
<hr/>			
<u>Proposed Member Interest</u>	<u>% Ownership</u>		
Esther Farkovitz	7.00%		
Bent Philipson	22.50%		

Financial Summary

Throgs Neck Extended Care Facility

	<u>FISCAL PERIOD ENDED</u>		
	<u>12/31/2007</u>	<u>12/31/2006</u>	<u>12/31/2005</u>
ASSETS - CURRENT	\$3,631,502	\$4,413,396	\$3,031,035
ASSETS - FIXED AND OTHER	10,527,114	10,211,093	9,325,296
LIABILITIES - CURRENT	4,858,779	5,166,835	4,628,931
LIABILITIES - LONG-TERM	<u>6,346,947</u>	<u>6,455,890</u>	<u>5,025,124</u>
EQUITY	\$2,952,890	\$3,001,764	\$2,702,276
INCOME	\$20,958,873	\$20,269,530	\$19,343,989
EXPENSE	19,973,021	19,970,042	20,103,394
NET INCOME	985,852	299,488	(759,405)
OPERATOR/RELATIVE SALARIES	\$0	\$0	\$0
NUMBER OF BEDS	205	205	205
PERCENT OF OCCUPANCY (DAYS)	94.4%	94.9%	80.90%
PERCENT OCCUPANCY (DAYS):			
MEDICAID	72.7%	75.3%	95.4%
MEDICARE	18.7%	13.9%	4.6%
PRIVATE/OTHER	8.6%	10.8%	0.0%
MEDICAID RATE BREAKDOWN:	<u>2008</u>	<u>2007</u>	<u>2006</u>
OPERATING	\$225.87	\$221.26	\$225.48
CAPITAL	<u>32.67</u>	<u>32.38</u>	<u>25.21</u>
TOTAL	\$258.54	\$253.64	\$250.69
<u>Proposed Members with ownership Interest</u>	<u>Ownership Interest</u>		
Esther Farkovitz	7.0%		
Bent Philipson	22.5%		

**Financial Summary
Townhouse Extended Care Facility**

BFA-Attachment J

	<u>FISCAL PERIOD ENDED</u>		
	<u>12/31/07</u>	<u>12/31/06</u>	<u>12/31/05</u>
ASSETS - CURRENT	\$6,394,845	\$4,758,749	\$3,459,408
ASSETS - FIXED AND OTHER	12,185,437	13,079,745	12,964,125
LIABILITIES - CURRENT	7,210,777	9,624,657	8,248,405
LIABILITIES - LONG-TERM	<u>7,529,739</u>	<u>5,452,781</u>	<u>5,792,557</u>
EQUITY	\$3,839,766	\$2,761,056	\$2,382,571
<hr/>			
INCOME	\$32,365,444	\$30,388,158	\$29,074,906
EXPENSE	<u>31,374,234</u>	<u>30,009,673</u>	<u>32,911,372</u>
NET INCOME	\$991,210	\$378,485	(\$3,836,466)
<hr/>			
OPERATOR/RELATIVE SALARIES	\$0	\$0	\$0
<hr/>			
NUMBER OF BEDS	260	260	260
PERCENT OF OCCUPANCY (DAYS)	96.53%	95.24%	73.35%
<hr/>			
PERCENT OCCUPANCY (DAYS):			
MEDICAID	73.70%	74.47%	96.26%
MEDICARE	13.75%	16.42%	3.22%
PRIVATE/OTHER	12.55%	9.11%	0.52%
<hr/>			
MEDICAID RATE BREAKDOWN:	<u>2008</u>	<u>2007</u>	<u>2006</u>
OPERATING	225.15	213.58	207.30
CAPITAL	<u>42.42</u>	<u>42.45</u>	<u>31.20</u>
TOTAL	267.57	256.03	238.50
<hr/>			
<u>Proposed Members with ownership Interest</u>	<u>Ownership Interest</u>		
Esther Farkovitz	7.00%		
Bent Philipson	22.50%		

ESTABLISHMENT CHECKLIST FOR NURSING HOMES

APPLICATION: 082134-E Niskayuna Operating Co., LLC d/b/a Pathway Rehabilitation and Special Care Center (Schenectady County)

NATURE OF PROPOSAL: Change in operational ownership

EFFECT ON OPERATIONAL OWNERSHIP: 100% transfer of membership interest.

EFFECT ON REAL ESTATE OWNERSHIP: N/A

FIXED ASSET PURCHASE PRICE: N/A

FIXED ASSET MEDICAID VALUE: N/A

CAPITAL REIMBURSEMENT:

Capitalized Lease
Historic Cost Method
X Shortfall; \$542,907 Average Annual Amount

BUSINESS PURCHASE PRICE: \$0

OPERATING REIMBURSEMENT RATE:

	<u>Rate</u>	<u>In Corridor</u>	<u>Over Ceiling</u>	<u>Less than Base</u>
Direct	\$267.09		X	
Indirect	\$100.71		X	

MEDICAID RATE REBASING:

Yes - If yes, annual impact
\$

X No

